CHEE KEONG (MALAYSIA) SDN BHD

v.

COLLECTOR OF STAMP DUTIES, MALAYSIA

HIGH COURT MALAYA, IPOH
KANG HWEE GEE J
[ORIGINATING MOTION: 25-38-1994]
17 JANUARY 1996

REVENUE LAW: *Stamp duty - Appeal - Whether appeal procedure against decision of Collector correct - Whether appeal should be by way of case stated - Stamp Act 1949, s. 39(1) - Whether appeal should be proceeded under O. 55 r. 3 Rules of the High Court 1980 - Whether appeal should first be lodged with High Court*

CIVIL PROCEDURE: *Appeal - By way of case stated - Whether correct - Whether appeal should first be lodged with High Court - Whether O. 55 r. 13 Rules of the High Court 1980 applicable - Whether s. 39(1) of Stamp Act 1949 applicable*

The plaintiff company (plaintiff) was assessed by the Collector of Stamp Duties ('Collector') to pay a total assessment of RM571,020 in respect of the conveyance of 4 lots of land. The plaintiff objected to the amount and suggested that the correct amount should be RM481,220 but the appeal was rejected by the Collector. The plaintiff then requested the Collector to state a case for the purpose of the appeal to the High Court under s. 39(1) of the Stamp Act 1949 ('the Act'). A draft of "case stated" was also submitted to the Collector for him to state and sign it.

The Collector failed to respond to the plaintiff's request and the applicant applied for an order of mandamus under s. 44 of the Specific Relief Act 1950 ('the Relief Act'). The Collector contended that the request from the plaintiff was not complied with because the plaintiff should have proceeded under O. 55 r. 13 of the Rules of the High Court 1980 ('RHC') to file an appeal by motion to the High Court and not to the Collector. Thus, the issues before the court were: (i) whether the plaintiff should have proceeded under O. 55 r. 13 of the RHC; and (ii) whether the plaintiff should have first lodged an appeal with the High Court before it received the case stated from the Collector.

Held:

[1] Where a statute lays down a procedure for the appeal that procedure must prevail.

[2] The right approach to read s. 39 of the Act is to read the section as merely providing the substantive law for an avenue to appeal against the decision of the Collector and not a detailed procedure for appeal. It must not be read as providing for requisite steps to be undertaken by the appellant to pursue his appeal.

[3] Under s. 39(1) of the Act, an appellant is not required to first lodge an appeal with the High Court before he receives the case stated from the Collector. All he needs to do as a preliminary step is to communicate his dissatisfaction and intention to appeal to the Collector within 21 days after the date of the assessment, requiring the Collector to state a case for the opinion of the High Court. Upon the receipt of the case stated from the Collector, he must comply with s. 39(2) of the Act to set it down for hearing within seven days by filing the case stated with the High Court.

[4] The plaintiff had embarked upon the correct procedure to pursue his appeal against the decision of the Collector to impose the stated amount of stamp duty on the properties of the plaintiff. The Collector owed the plaintiff a public duty under s. 39(1) of the Act to state and sign a case for the opinion of the High Court in respect of the correctness of the assessment made by him. His refusal to do so could have injured the plaintiff's right to have his appeal heard by the High Court. It was clear that no other specific, adequate and complete legal remedy was open to him, other than to apply for the order he was seeking under s. 44 of the Relief Act.

[Application granted.]

Case(s) referred to:
Chong Yoke Choy & Anor v. The Collector of Stamp Duties, Kuala Lumpur [1950] 16 MLJ 276 ***(refd)***

Legislation referred to:
Income Tax Act 1967, para. 34 sch. 5
Rules of the High Court 1980, O. 53 r. 1, O. 55 r. 13
Specific Relief Act 1950, s. 44
Stamp Act 1949, s. 39(1), (2)

Stamp Act 1891 [UK], s. 13(1)

Other source(s) referred to:
Atkin's Court Forms, 2nd edn, 34(1) 1994
Mallal's Supreme Court Practice, 2nd edn, vol 1, p 673

For the plaintiff - Romesh Roy; M/s WY Chan & Roy
For the defendant - Raja Kamarulzaman; SFC

Reported by Michele Saw

JUDGMENT

Kang Hwee Gee J:

In this application the plaintiff a limited company is seeking an order under s. 44 of the Specific Relief Act 1950 to direct the Pemungut Cukai Setem Malaysia to state and sign a case and deliver the same to the applicant pursuant to s. 39(2) of the Stamp Act 1949, setting forth the question on which his opinion was required on the assessments made by him on the duty chargeable on four transfers of land namely, Lots 393, 395, 396 and 398 in the Mukim of Belanja.

Leave to apply for the said order under O. 53 r. 1 of the Rules of the High Court 1980 was granted by this court on 26 July 1995. At the same proceeding plaintiff counsel applied that the same papers for this application be used as the substantive application to save time and expense. As the papers for the substantive application would in essence be a mere duplication of form which would be based on the same supporting affidavit I allowed his application. Hence the present substantive application.

The plaintiff's application is precipated by the need to pay the requisite stamp duty in respect of the conveyance of four lots of land to the Collector of Stamp Duties which is best described by the following course of events as disclosed in the affidavit (encl. 2) of Choo Swee Yoong, a director of the plaintiff company.

1. The Pemungut Cukai Setem Malaysia had *vide* a notice of assessment (Exh. CSY-1) dated 29 April 1993 assessed stamp duties on the respective land as follows:

a) Lot 393	RM2,405,000	Mukim of Belanja
b) Lot 395	RM4,689,000	-sda-
c) Lot 398	RM6,381,000	-sda-
d) Lot 396	RM3,398,000	-sda-

   In the same notice the plaintiff was invited to object to the assessment imposed within 30 days if dissatisfied.

2. By a letter dated 26 May 1993 (exh. CYS-2) the plaintiff company through its solicitors objected to the total assessments of RM571,020 imposed by the Collector in respect of the 4 lots and suggesting that the correct amount should be RM481,220 instead.

3. By a letter dated 28 July 1993 (exh. CSY-3) the Collector rejected the plaintiff's appeal and confirmed the duty imposed in the earlier notice of assessment.

4. By a letter dated 17 August 1993 (exh. CSY-4) the plaintiff appealed against the said assessments and requested Collector to state a case for the purpose of the appeal to the High Court under s. 39(1) of the Stamp Act 1949. In the letter the plaintiff also submitted a draft of the "case stated" in the form of Exhibit (CSY-5)

5. The Collector failed to respond to the plaintiff's request.

6. Accordingly, the applicant gave notice by letter dated 7 September 1994 (CSY-6) that if the defendant failed to state a case within 7 days it would apply for an order of *mandamus* under s. 44 of the Specific Relief Act 1950 to compel the defendant to do so.

7. The defendant having failed to comply with the notice, the plaintiff proceeded to file this application.

Defendant's Position

In her affidavit (encl. 5A) opposing the plaintiff's application Cik Maridah bt. Ludin the Timbalan Pemungut Duty Setem, Jabatan Hasil Dalam Negeri, the officer responsible for all matters relating to the collection of stamp duties, did not deny that defendant had received the plaintiff's request to state a case. The only reason the plaintiff had not complied with the request was because the plaintiff had applied the wrong procedure to pursue his appeal. The plaintiff, she contended, should proceed under O. 55 r. 13 of the Rules of the High Court 1980 to file an appeal by motion to the High Court and not to the Collector as the plaintiff had done.

Whether O. 55 r. 13 applies:

Order 55 Rule 13 reads as follows:

> 13(1) Where under any written law an appeal lies from any decision of any person or body of persons of the High Court such appeal shall be made to the High Court in the State where the decision was given by motion setting out the grounds of appeal, supported by affidavit and, if the Court so directs at the hearing, by oral evidence.
>
> Unless otherwise provided by any written law, such appeal shall be made within one month from the date on which the decision was given or the date on which such decision was notified to the person appealing, whichever is the later date.

(3) Unless otherwise provided by any written law, notice of the motion shall be served on the respondent in such appeal or where the respondent is a body of persons, on the secretary, registrar or such other officer of that body of persons.

Although O. 55 r. 13 appears to lay down inflexibly that all appeals from any decision of any person or body of persons to the High Court shall be made by motion the learned author of *Mallal's Supreme Court Practice* (2nd edn, vol. 1 at p. 673) states that where a statute lays down a procedure for the appeal that procedure must prevail. Thus an appeal from the Special Commissioners of Income Tax by para. 34 Sch. 5, Income Tax Act 1967 is not proceeded with under O. 55 r. 13 but by the specific procedure of "case stated".

As *Mallal's Supreme Court Practice* is the only authoritative source of material in civil procedure that I could rely on I would accordingly have to hold that in the present case the plaintiff need not appeal by motion under O. 55 r. 13 but should do so by the prescribed procedure of case stated as provided under s. 39 of the Stamp Act 1949.

Whether The Plaintiff Must First Lodge An Appeal With The High Court:

Section 39 of the Stamp Act 1949 reads as follows:

39.(1) Any person who is dissatisfied with the assessment of the Collector may, within twenty-one days after the date of the assessment and upon payment of duty in conformity therewith, appeal against the assessment to the High Court, and may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required, and the assessment made by him.

(2) The Collector shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within seven days thereafter or within such further time as the Court may allow, be set down by him for hearing.

(3) Upon the hearing of the case the Court shall determine the question submitted, and, if the instrument in question is in the opinion of the Court chargeable with any duty, shall assess the duty with which it is chargeable.

(4) If it is decided by the Court that the assessment of the Collector is erroneous, any excess of duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the Court to be repaid to the appellant, with or without costs as the Court may determine.

(5) If the assessment of the Collector is confirmed the Court may make an order for payment to the Collector of the costs incurred by him in relation to the appeal.

Appeals from the assessment of stamp duty from a collector it seems are seldom made and no guidance from past practice could be obtained from the court registry. Both the counsel for the plaintiff and defendant were unable to cite any authority that lays down for general guidance the steps that a person who is dissatisfied with the decision of the Collector should take to prosecute his appeal by case stated to the High Court.

Plaintiff counsel however was able to cite the pre independence case of *Chong Yoke Choy and Anor v. The Collector of Stamp Duties, Kuala Lumpur* [1950] 16 MLJ 276, to explain the essentials of an appeal by case stated under s. 39 of the Stamp Act 1949. The relevant passage reads as follows:

> I cannot comment further on the administrative procedure but the action raises a question of legal procedure with which I must deal.

Section 39 of the Ordinance provides that:

> Any person who is dissatisfied with an assessment by the Collector (of Stamps) may ... appeal to the High Court and may ... require the Collector to state a case setting forth the question ...
>
> The expression "state a case" is technical. It is true that under this section, as under many similar provisions, the officer of the tribunal appealed from is to "state" and sign the case but that does not mean that he is to draft it. It is for the appellant to frame his own contentions. The general practice is for the appellants' legal advisers to make the first draft of the case and send it to the respondent's advisers for their consideration, after which it is submitted to the presiding officer who alone can settle accurately that part of the document which expresses his findings of fact and his opinion on the points requiring decision. It may be necessary for the parties to attend before the tribunal for final revision of the draft. The essence of a case stated is a joint statement by all three of the facts and of outstanding issues so that the appellate Court has the whole matter before it in the most concise form. Ordinarily one document suffices but occasionally a deed or a valuation may be annexed. This procedure cuts out the delay and expense of copying the many letters and other cumbrous documents which are comprised in the record of an ordinary appeal. It was objected at the hearing that this is not a convenient way of bringing an appeal on a disputed question of fact - and value is a question of fact. That may be so but the answer lies in the statute.
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> In this case the correct practice was not adopted. The appellant's solicitor merely demanded a case without ever offering a draft or (so far as appears) consulting the Law Officers. The Stamp Officer then issued a document headed "Case Stated". Whether he did so with or without advice does not appear but

the document is not a "case stated'' in the sense of the Ordinance. It is merely a history of the dispute. The Collector is not a legal officer but he should at least have complied with the provision of his own Ordinance which expressly requires him to "set forth the question." He omitted to do so. The issue can be gathered or inferred but not with sufficient completeness or precision. The appellants' solicitor therefore supplemented it by annexing eighteen other documents, some of which are irrelevant and all of which ought to have been unnecessary. In short, he proceeded on the lines of an ordinary appeal from a Magistrate, treating the so-called "case" as the judgment, but in his argument he submitted that the Stamp Officer was his substantial adversary in the litigation and that the onus of proof of his valuation was on him.

(per Taylor, J)

For all that it expounded on the subject of case stated, the judgement of Taylor J provides no guidance as to whether an appeal must first be lodged with the High Court before the Collector could be moved to act. To find that answer one may have to rely on the procedure obtaining in England where a similar avenue of appeal is provided in s. 13(1) of the English Stamp Act of 1891 in respect of the collection of stamp duties by the Commissioners of Inland Revenue which is in *pari materia* with our s. 39(1) Stamp Act 1949 save for the substitution of "Commissioner" in the English Act for "Collector". The procedural steps for appeal in England is well set out in *Atkin's Court Forms* 2nd edn, 34(1) 1994 Issue as follows

Table 7. Appeal against Stamp Duty assessments

Steps to be taken	Form No.	Stamp Act 1891
1. Commissioners of Inland Revenue assess stamp duty payable		s. 12
2. Party dissatisfied with assessment pays any duty assessed. This is a prerequisite appealing.		s. 13(1)
3. Party dissatisfied with assessment requires Commissioners of Inland Revenue to state a case for the opinion of the High Court.		s. 13(1)
Time: Within 21 days after the date of assessment.		s. 13(1)
4. Commissioners state and sign case and deliver it to Appellant.	46	s 13(2)
5. Appellant sets case down in Chancery Chambers.		s. 13(2)
Time: Within 7 days after delivery.		s. 13(2)
Fee on filing case:		
A copy must be left for the Judge's use.		

6. Revenue Judge hears case, determines question and, if he determines the instrument is chargeable with duty, assess the duty.	47	s. 13(3)
If the Judge decides the Commissioners' assessment was erroneous he must order repayment of any duty, fine or penalty which has been paid.		s. 13(4)

As can be noted from the form above, an appeal by way of case stated under the English Stamp Act 1891 (from which undoubtedly s. 39 of the Stamp Act 1949 was grafted from) does not require the appellant to file his appeal to the High Court as a preliminary step as is done in the case of an appeal from the Magistrates or Sessions Court in this country. A party dissatisfied with the Commissioners' assessment of stamp duty in England needs only require the Commissioners to state a case for the opinion of the High Court within the 21 days period. Upon the Commissioners stating and signing it, the completed case stated is returned to the appellant who would have to set the case down at the appropriate court within 7 days. Nowhere is it listed in the steps to be taken that the appellant should lodge an appeal with the High Court before requiring the Commissioners to state and sign a case. The appellant is required to set it down for trial only after the completed case stated is delivered to the appellant. To illustrate the point further it would be necessary to reproduce from *Atkin's Court Forms* a sample of a case stated as it is framed for the opinion of the High Court of Justice, Chancery Division in England:

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CASE STATED by Commissioners of Inland Revenue for the opinion of the High Court

(Royal Arms)

IN THE HIGH COURT OF JUSTICE
Chancery Division
Revenue List

Between	A.B. Ltd.	Appellant
	and	
	Commissioners of Inland Revenue	Respondents

CASE STATED by the Commissioners of Inland Revenue pursuant to Section 13 of the Stamp Act 1891.

1. The opinion of the Court is desired as to the stamp duty chargeable on an Agreement (hereinafter referred to as "the Agreement") made the .. day of 19... between X.Y. of (address) (hereinafter called "Mr. Y.") of the one part and the Appellant whose registered office is situate at ...

Rutley, of the other part, which has been presented by the Appellant to the Respondents under Section 12 of the Stamp Act 1891 for the opinion of the Respondents as to the stamp duty with which it is chargeable. A copy of the Agreement is annexed hereto marked "A" and forms part of this Case.

2. Clause 1 of the Agreement provides that in consideration of the sum of ... paid by the Appellant to Mr. Y. the receipt of which was thereby acknowledged, the Appellant will have the opinion of purchasing the property therein described for an estate in fee simple in possession, subject as thereafter mentioned but otherwise free from encumbrances on the terms and conditions set forth in the Second Schedule thereto. The option is expressed to be for a period of five years and to be exercisable within fifteen days after outline planning has been obtained. The purchase price for the property is to be at the rate of ... an acre if the option is exercised during the first three years, and ... an acre if exercised during the last two years. Clause 5 provides that upon the exercise of the said option the Appellant will pay to Mr. Y.'s solicitors, as stakeholders, by way of deposit a sum which represents 10 per cent of the balance of the purchase price after deducting the consideration of already paid to Mr. Y. which, in the event of the option being exercised, is deemed to form part of the purchase price payable.

3. The Respondents were of the opinion that the Agreement was an instrument securing a right not before in existence upon a sale thereof, within Section 60 of the Stamp Act 1891, and therefore to be charged with the same duty as an actual grant or conveyance, and for the purpose of that Act to be deemed an instrument of conveyance. Alternatively they were of the opinion that the Agreement was liable to duty under Section 54 of that Act, as an instrument whereby an estate or interest in property was transferred to or vested in a purchaser.

4. The Respondent accordingly assessed the Agreement to *ad valorem* duty on the amount or value of the consideration for the option and assessed the duty at ... for every ... of the amount or value of the consideration of ... duty ...

5. The Appellant contended that the Agreement did not constitute a transaction of sale, and did not in any event require to be completed by grant or conveyance (set out any further grounds of appeal).

6. The Appellant, being dissatisfied with the assessment made and having paid the duty in accordance therewith, appealed against the said assessment to the High Court, and for that purpose required the Respondents to state and sign a case setting out the questions on which the opinion was required and the assessments made by them and the Commissioners do sign this case accordingly.

7. The questions for the opinion of the Court are:

(1) whether the Agreement is liable to duty as assessed by the Respondents;

(2) if not, to what duty, if any, is it liable.

Given under the hands of the Commissioners of Inland Revenue this ... day of ... 19 ...

(Signature of two of the Commissioners of Inland Revenue)

It could be seen from the form above that unlike in an ordinary appeal to the High Court from a subordinate court where the grounds of decision which is submitted to High Court contains only the finding of the deciding judge, a case stated contains both the opinions of the appellant and the adjudicator as to the correctness of the decision he made. It would therefore appear pointless for the appellant to lodge any papers with the High Court before the appellant obtains and settles the issues to be incorporated in the case stated for the opinion of the High Court.

On cursory reading, s. 39(1) of the Stamp Act 1949 seems to impose upon the appellant the pre requirement of filing an appeal to the High Court before the Collector is obliged to state and sign a case. This is so only because of the words "appeal against the assessment to the High Court". The right approach is to read s. 39 as merely providing the substantive law for an avenue to appeal against the decision of the Collector and not a detailed procedure for appeal. It must not therefore be read as providing for the requisite steps to be undertaken by the appellant to pursue his appeal.

In my judgment an appellant is therefore not required under s. 39(1) of the Stamp Act 1949 to first lodge an appeal with the High Court before he receives the case stated from the Collector. All that he needs to do as a preliminary step is to communicate his dissatisfaction and intention to appeal to the Collector within 21 days after the date of the assessment, requiring the Collector to state a case for the opinion of the High Court. Upon receipt of the case stated from the Collector he must comply with s. 39(2) of the Act to set it down for hearing within 7 days by filing the case stated with the High Court.

There is a minor point with regard to the question whether the plaintiff was out of time in lodging his appeal which I may just as well deal with in the present case although this was not raised in the hearing before me. I observe that the plaintiff had in fact received the notice of assessment from the Collector as early as 29 April 1993. But this should not be taken as the date

of assessment as it is clear that the assessment was not finalised on this date, the Collector having invited the plaintiff in the same letter to object within 30 days. The date of assessment which should be taken into account for the purpose of computing the 21 days period prescribed in s. 39(1) of the Act in the present case should be the date when the assessment was finalised by the Collector, that is to say on 28 July 1993 when he rejected the objection of the plaintiff and confirmed the duty he had imposed earlier. The plaintiff was therefore well within the requisite 21 days when he gave notice of appeal to the Collector on 7 September 1994.

Justification To Issue An Order Of Mandamus

It is clear to me that the plaintiff in this case had embarked upon the correct procedure to pursue his appeal against the decision of the Collector of Stamp Duties to impose the stated amount of stamp duty on the properties of the plaintiff. The Collector owes the plaintiff a public duty under s. 39(1) of the Stamp Act 1949 to state and sign a case for the opinion of the High Court in respect of the correctness of the assessment made by him. His refusal to do so will without doubt injure the plaintiff's right to have his appeal heard by the High Court. It is also clear that no other specific, adequate and complete legal remedy is open to him other than to apply for the order he is now seeking under s. 44 of the Specific Relief Act 1950.

I would therefore grant an order in terms of this application.